

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 198 OF 2022
[@ SLP(Crl.)No. 9796 of 2021]

SK. SUPIYAN @ SUFFIYAN @ SUPISAN APPELLANT

v.

THE CENTRAL BUREAU OF INVESTIGATIONRESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

1. The appellant is aggrieved by the impugned Order of the High Court at Calcutta by which he was denied pre-arrest bail. The appellant sought pre-arrest bail in connection with First Information Report (FIR) registered at the Nandigram police station. One Debabrata Maity sustained injuries on 3rd May 2021 in an alleged incident of mob attack. He succumbed to injuries on 13th May 2021. The FIR was registered for the offences punishable under Sections

147, 148, 149, 323, 325, 326, and 302 of the Indian Penal Code (IPC) on 13th May 2021. The appellant was not named in the FIR.

2. The Central Bureau of Investigation (CBI) took over the investigation of the case on 30th August 2021. Though in September 2021, the appellant was called for investigation by CBI, in the first charge sheet filed on 5th October 2021, the appellant was not named as an accused. As the appellant received a notice from CBI to remain present for investigation, on 25th October 2021, he filed a petition for seeking anticipatory bail before the High Court. On 27th October 2021, protection against arrest was granted by the High Court to the appellant. The appellant was denied anticipatory bail by the impugned Order dated 29th November 2021. A supplementary charge sheet was filed on 6th January 2022 in which the appellant was not named as an accused.

3. This Court by Order dated 28th January 2022, while granting interim relief, directed the respondent-CBI to produce copies of statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'CrPC') on which the respondent-CBI was relying upon. Accordingly, copies of the statements of 18 witnesses recorded under Section 161 of CrPC, as

well as copies of 5 witnesses recorded under Section 164 CrPC have been placed on record.

4. Shri Kapil Sibal, the learned Senior Counsel appearing for the appellant pointed out that the appellant was not even named in the two charge sheets filed by CBI on 5th October 2021 and 6th January 2022 respectively. He invited our attention to the statements of witnesses recorded by CBI under Section 164 of CrPC. He pointed out that the first statement relied upon is of one Ranjit Maity. The statement was recorded on 7th September 2021 in which the witness merely stated that he has heard that the appellant was the main leader of the incident. He pointed out that though the statement was recorded on 7th September 2021, in both the charge sheets subsequently filed by CBI, the appellant was not named as an accused. He pointed out that after the application for grant of anticipatory bail was filed by the appellant, statement of one Sulekha Bogri was recorded on 18th November 2021 in which she stated that the incident happened under the leadership of the appellant. He submitted that though witness Ranjit Maity deposed that the appellant was not present at the time of the incident, the version of Sulekha is to the contrary. He pointed out that the statement under Section 164 of CrPC of witnesses Manoj Kumar Bera was recorded

on 18th November 2021. The statements of Ashish Das and Bishwajit Panda were belatedly recorded on 24th January 2022. He pointed out that the said three witnesses are not named in both the charge sheets as witnesses. He submitted that on the face of it, the statement of witness Manoj Kumar Bera cannot be believed. The reason is that for the first time in November 2021, he deposed that on 3rd May 2021, the appellant and some other persons ransacked his house and assaulted his mother and wife. He pointed out that the said witness never complained till 18th November 2021 about the incident. He also pointed out that the said witness who was at Village Tarachandbar claims that he heard loud noises from Village Chillagram which is at a distance of 5 km from village Tarachand Bask. He pointed out that in the statements belatedly recorded on 24th January 2022, the other two witnesses Ashish Das and Bishwajit Panda have tried to ascribe a role to the appellant.

5. Shri Sibal urged that CBI tried to implicate the appellant for political reasons as the appellant was the election agent of the Chief Minister of West Bengal in the Vidhan Sabha Elections held in 2021. He submitted that most of the witnesses are workers of the Bharatiya Janata Party and for obvious political reasons, the appellant is sought to be falsely implicated. He invited our attention to the media

reports about the statements made by one Suwendu Adhikari, who is a leader of BJP who contested election against the Chief Minister. In the said statements made by him in October 2021, he stated that the appellant would be named by the investigating agency and will be arrested. He pointed out that now the respondent-CBI wants to rely upon offences registered against the appellant in the year 2007 relating to agitations at Nandigram. He pointed out that the cases of 2007 were withdrawn by the State Government by invoking Section 321 of CrPC. But, the order of withdrawal was stayed by the High Court of Calcutta. He pointed out that this Court by the Order dated 26th March 2021 has stayed the operation of the order passed by the High Court of Calcutta on the ground that the High Court did not give an opportunity of being heard to the appellant. The learned Senior Counsel by relying upon observations of this Court in the case of **Shri Gurbaksh Singh Sibbia and Others v. the State of Punjab**¹ submitted that this is a case where the process of criminal law is tried to be perverted for achieving extraneous ends and, therefore, the appellant deserves to be granted pre-arrest bail.

6. Shri Aman Lekhi, the learned Additional Solicitor General of India urged that this is a case of a serious offence punishable under Section 302 of IPC and therefore, custodial interrogation of the

¹ (1980) 2 SCC 565

appellant is necessary. Relying upon statements of the witnesses recorded under Section 164 of CrPC, he urged that looking into the seriousness of the allegations, the appellant does not deserve the protection of pre-arrest bail. He submitted that merely because there is some delay in recording the statements of the witnesses, the appellant cannot be protected considering the seriousness of the offence.

7. Shri P.S. Patwalia, the learned Senior Counsel appearing for the complainant invited our attention to reasons recorded by the High Court for denying pre-arrest bail. He submitted that the High Court has rightly applied well-settled law governing the grant of anticipatory bail. Accordingly, by considering the gravity of the offence and material in the form of statements of the witnesses under Section 164 of CrPC, the relief has been rightly denied to the appellant.

8. We have considered the submissions. The incident is of 3rd May 2021. Though two charge sheets have been filed on 5th October 2021 and 9th January 2022, the appellant has not been named as an accused therein. Now, the respondent-CBI is relying upon statements of 5 witnesses recorded under Section 164 of CrPC. The statements of the first two witnesses were recorded on

7th September 2021 and 11th November 2021 respectively. But the appellant was not named in both the charge sheets filed thereafter. Though the statement of Shri Manoj Kumar Bera was recorded on 18th November 2021, he was not cited as a witness in the first two charge sheets. The statements of the other two witnesses have been belatedly recorded on 24th January 2022.

9. Considering the peculiar facts of the case, we are of the view that the appellant deserves to be granted pre-arrest bail. However, the appellant will have to fully cooperate with the respondent-CBI for investigation and will have to remain present for investigation as and when called upon by the investigating officer.

10. Accordingly, the impugned Order is set aside. Pre-arrest bail is granted to the appellant in connection with Case No. RC 0562021S0032 of CBI arising out of Nandigram PS Case No. 224 of 2021, on the conditions incorporated in clauses (i) to (iii) of sub-section (2) of Section 438 CrPC. The appellant shall fully cooperate for investigation and shall remain present for investigation as and when called upon by the respondent-CBI. We make it clear that the pre-arrest bail granted to the appellant is liable to be cancelled if it is found that the appellant is not cooperating for the investigation. We

further make it clear that we have not made any adjudication on the merits of the controversy.

11. The appeal is disposed of in the above terms. All the pending applications, if any, stand disposed of.

.....J
(L. NAGESWARA RAO)

.....J
(ABHAY S. OKA)

New Delhi;
February 09, 2022.